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News and Legislation Relating to Employment and Background Checks

News and Federal Legislation:

Background Checks

- On January 19th, the U.S. Supreme Court unanimously held that the National Aeronautics and Space Administration (NASA) did not violate the constitutional rights of federal contract employees when NASA asked those employees whether they had ever received counseling or treatment for illegal drug use in the past year, and asked references to disclose information that could result in the employee's termination. Justice Alito wrote, "we reject the argument that the government, when it requests job-related personal information in an employment background check, has a constitutional burden to demonstrate that its questions are 'necessary' or the least restrictive means of furthering its interests." The vote was 8-0; Justice Kagan recused herself from the case.
(http://news.yahoo.com/s/ap/20110119/ap_on_re_us/us_supreme_court_nasa_privacy)
- On January 3rd, the House Judiciary Committee released a report summarizing committee activity during the 111th Congress. Among the many areas covered in the report, the committee highlights legislative actions in the areas of caller ID spoofing, COPS authorization, the MATCH Act, SORNA oversight (sex offender registry), background checks, etc.
(<http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt712/pdf/CRPT-111hrpt712.pdf>)

Employment

- On January 26th, the House Judiciary Subcommittee on Immigration Policy and Enforcement held a hearing on enforcing immigration laws at worksites, including a discussion of expanded use of the government's E-Verify system. Kumar Kibble, Deputy Director of U.S. Immigration and Customs Enforcement (ICE) called E-Verify easy to use and highly effective and stated that, "ICE is committed to a comprehensive approach to immigration enforcement that focuses on identifying and removing criminal aliens who pose a threat to public safety."
(http://judiciary.house.gov/hearings/hear_01262011.html)
- On January 18th, the Government Accountability Office published its report regarding the effectiveness of the U.S. Citizen and Immigration Service's (USCIS) E-Verify program. The report found that the program erroneously flagged 0.3% of employees for ineligibility, despite being eligible. The report notes that if E-Verify were to become mandatory for all American employers, it would amount to approximately 180,000 erroneously flagged employees a year.
(<http://www.gao.gov/new.items/d11146.pdf>)
- On January 5th, Rep. David Dreier (R-CA) introduced a bill (H.R. 98) that calls for improved Social Security cards to prevent the unauthorized employment of aliens. The bill would also create an Employment Eligibility Database that would contain information on citizenship status data and work/residency eligibility information for individuals who are not citizens or nationals, but that are authorized to work in the US.
(<http://thomas.loc.gov/cgi-bin/t2GPO/http://www.gpo.gov/fdsys/pkg/BILLS-112hr98ih/pdf/BILLS-112hr98ih.pdf>)



- On December 21st, the Equal Employment Opportunity Commission (EEOC) announced a lawsuit filed against Kaplan Higher Education Corp. for allegedly using credit score data as a basis for discriminating against prospective African American employees. EEOC attorney Debra Lawrence stated that the use of credit score data as a basis for employment did not excuse Kaplan from rejecting so many African American applicants. The lawsuit seeks lost wages, benefits and offers of employment to those who were not hired.
(<http://www.examiner.com/labor-relations-in-miami/kaplan-higher-education-corp-hit-with-discrimination-lawsuit>)

News and State Legislation:

Background Checks

- On January 12th, the District of Columbia enacted a bill (B. 826), which limits the ability of the District government to consider a criminal background check for public employment. Except where the District defines the job as a “covered” job, the initial application may not ask about criminal history. During the interview phase, the District may ask about criminal history, but must give the candidate an opportunity to explain any criminal record and must also consider mitigating factors, which could reduce the negative impact of the record on hiring decisions. The bill now awaits a thirty day Congressional review period.
(<http://www.dccouncil.washington.dc.us/images/00001/20110105123729.pdf>)

Employment

- On January 22nd, Georgia Labor Commissioner Mark Butler sought federal funding to perform 100 random audits to identify whether government agencies and contractors were using the E-Verify program. Butler remarked, “it is one of the things I campaigned on. I am in full support of it.”
(<http://www.ajc.com/news/georgia-politics-elections/georgia-plans-to-audit-811370.html>)
- On January 6th, Rhode Island Governor Lincoln Chafee signed an order repealing the state's participation in the federal E-Verify program. Chaffee also sent a directive to the Rhode Island State Police (RISP) to withdraw further state participation under its prior memorandum of agreement (MOA) with ICE. Chaffee stated, “this re-set will allow us to engage in a comprehensive dialogue with our immigrant communities, law enforcement agencies, and all interested parties. This is an opportunity to reach a consensus on how best to enforce the law.”
(<http://coloradoindependent.com/71248/rhode-island-governor-rescinds-states-participation-in-e-verify-and-secure-communities>)
- On January 4th, Florida Governor Rick Scott issued an executive order (Executive Order 11-02) that would require all agencies under the governor's direction to “verify the employment eligibility of all current and prospective agency employees through the U.S. Department of Homeland Security's E-Verify system.” The order also applies to contractors and subcontractors performing employment duties within Florida and “all persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract with the state agency.”
(<http://www.politifact.com/florida/promises/scott-o-meter/promise/618/require-all-florida-employers-to-use-e-verify-syst/>)